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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/995,424	11/27/2001	Donald Joseph Dermody JR.	DD01-001	9760

7590  
Billy J. Knowles  
72 Hurley Ave.  
Kingston, NY 12401

02/05/2004

EXAMINER

WILSON, LEE D

ART UNIT	PAPER NUMBER
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3723

DATE MAILED: 02/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/995,424

Applicant(s)

DERMODY, DONALD JOSEPH

Examiner

LEE D WILSON

Art Unit

3723

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-42 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13, 15-27 and 29-41 is/are rejected.
- 7) ☒ Claim(s) 14, 28, 42 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

Art Unit: 3723

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-4, 7-11, 13, 15-19, 21-25, 27, 29-33, 35-39, and 41, are rejected under 35 U.S.C. 102(b) as being anticipated by Nishimura (5244194).

Nishimura discloses a compound jaw having a primary member (13), a first secondary jaw member (11) with a cutting template (which the top flat surface), a second secondary jaw member (11"), first type of fastener (11c1)

In regard to claims 5, 19, 26, and 33, the torque applied to the screw greater than approximately 250 in/lbs because there is nothing stopping anyone from fastening the screw on with that force or any force useable to attach a fastener.

In regard to claims 29-33 and 35-39, The method is merely the natural operation of claimed invention.

3. Claims 1-4, 7-11, 13, 15-19, 21-25, 27, 29-33, 35-39, and 41, are rejected under 35 U.S.C. 102(b) as being anticipated by Durfee (5150888).

Art Unit: 3723

Durfee Jr. discloses a compound jaw having a primary member (20), a first secondary jaw member (21) with a cutting template (which the top flat surface), a second secondary jaw member (422&21 a and b), and first type of fastener (23).

In regard to claims 5, 19, 26, and 33, the torque applied to the screw greater than approximately 250 in/lbs because there is nothing stopping anyone from fastening the screw on with that force or any force useable to attach a fastener.

In regard to claims 29-33 and 35-39, The method is merely the natural operation of claimed invention.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 6, 12, 20, 26, 34, and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over in view of Nishimura (5244194).

a. Nishimura is discussed above.

b. Nishimura discloses the claimed invention except for ½ x 13 cap screws. It would have been an obvious matter of design choice to ½ x 13 cap screws and 1/4 x 20 cap screws, since such a modification would have involved a mere change in the size of a component. A change in

Art Unit: 3723

size generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

c. In regard to claims 34 and 40, The method is merely the natural operation of claimed invention.

6. Claims 6, 12, 20, 26, 34, and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over in view of Durfee (5150888).

a. Durfee is discussed above.

b. Durfee discloses the claimed invention except for ½ x 13 cap screws. It would have been an obvious matter of design choice to ½ x 13 cap screws and 1/4 x 20 cap screws, since such a modification would have involved a mere change in the size of a componetn. A change in size generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

c. In regard to claims 34 and 40, The method is merely the natural operation of claimed invention.

***Allowable Subject Matter***

1. Claims 14, 28, and 42 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

1. **Applicant's arguments filed 11/7/03 have been fully considered but they are not persuasive.**

2. **Applicant states that the prior does not disclose first and second cutting templates.**

a. However, Nishimura discloses a first secondary jaw member being machined to have a cutting template formed therein. Note the top of the plate 11" especially in figure 8. The applicant is relying more on intended uses as oppose to structure because what is the structure of the template. The applicant needs to define the structure of that plate it configuration and its connection the other plate so that the top of the plate cannot be used to read on the claim. This goes for all of the art.

***Conclusion***

3. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

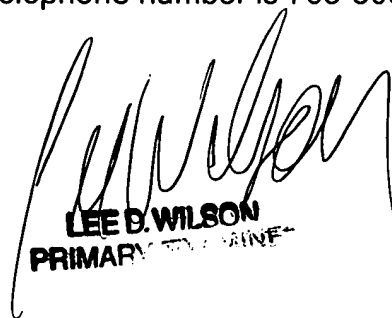
1. Any inquiry concerning this communication or earlier communications from the examiner should be directed to LEE D WILSON whose telephone number is 703-305-4094. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, JOSEPH HAIL can be reached on 70-308-2687. The fax phone number for the organization where this application or proceeding is assigned is 703-305-9835.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-0000.

Ldw

January 23, 2004

  
**LEE D. WILSON**  
**PRIMARY EXAMINER**